

TO: TOWN COUNCIL

FROM: TOWN MANAGER

RE: OPEN SPACE COMMITTEE 2 RECOMMENDATIONS AND A CITIZEN  
REQUEST REVIEW

### **ISSUE**

Council completed most of its review of Open Space Committee 2 recommendations however there were some items that were slated to return to Council for further deliberation and decision; and a citizen request item was received in December that also requires Council review.

### **RECOMMENDATION**

Decide on the OSC-2 recommendations, and citizen request, and determine which, if any, to forward to the Park, Recreation and Open Space Committee for inclusion in the draft Park Master Plan.

### **MONEY**

There are no money issues at present with these recommendations.

### **CEQA**

Environmental issues will be addressed once projects are defined or changes, if any, are recommended in the General Plan or Zoning Code.

### **DISCUSSION**

At the December 2009 meeting Council decided on a few of the left over Open Space 2 recommendations. There are still some recommendations remaining for Council consideration.

A citizen request was submitted in December, after the Council meeting, and Council is asked to decide whether the issue raised should be included in the draft of the Park Master Plan.

Council will want to conclude the review of the OSC-2 recommendations tonight so that the Council's input can be forwarded to the Park, Recreation and Open Space Committee and the consultant working on the master plan. There will be a community meeting on the master plan on February 27<sup>th</sup> and it would be helpful to have all the information come together by then.

**12/8/09 Council decided the following OSC-2 recommendations**

**KEY RECOMMENDATION**

2. **Fund Open Space Preservation on a Sustainable Basis** – The Town should revise its estimate of open space funding requirements to include all the needs detailed in this report. The Town should recognize that open space is not discretionary, but critical to the future quality of life of Loomis residents. Once a new budget is developed, the Town should determine which of the recommended funding tools should be applied to meet those needs. OSC-2 cautions the Town not to rely on development impact fees to fund open space, as that establishes a self-defeating cycle of relying on development to fund open space preservation. Grants should be used only to supplement a fully funded Open Space budget of the Town.

COUNCIL ACTION key recommend 2:	<del>REFER TO PROSC</del>	<del>RETURN TO COUNCIL</del>	<b>TABLE</b>
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**A. General Plan (GP)**

5. Increase required buffer (setback) near creeks and wetlands.

COUNCIL ACTION A5:	<del>REFER TO PROSC</del>	<del>RETURN TO COUNCIL</del>	<b>TABLE</b>
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6. Maintain a list of Special Properties with significant potential for preserving open space and natural resources, and provide incentives to willing property owners.

COUNCIL ACTION A6:	<b>REFER TO PROSC</b>	<del>RETURN TO COUNCIL</del>	<del>TABLE</del>
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FOLLOWING ARE THE RECOMMENDATIONS FOR FURTHER DELIBERATION THAT COUNCIL IS ASKED TO CATEGORIZE ACCORDING TO THOSE THAT:

- SHOULD BE REFERRED TO THE PROS COMMITTEE FOR INCLUSION IN THE MASTER PLAN; OR
- REQUIRE FURTHER REVIEW BY COUNCIL BEFORE CATEGORIZING; OR
- SHOULD BE TABLED BECAUSE THE RECOMMENDATION HAS BEEN COMPLETED OR COUNCIL DETERMINES THAT THE ITEM NEED NOT BE INCLUDED IN THE MASTER PLAN.

## 10/14/08 Council decided to further consider the following from Section A:

7. Expand the list of Specific Areas in Chapter III, Sec. G to include several areas proposed by the OSC-2.

COUNCIL ACTION A7:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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10/14/08 minutes

- Council moved that this item should come back with more information.
- Roger Smith comments: item 7 is about specific areas (intersections, entry points to Town, certain rural roads, etc.)
- Gary Liss comments: should be modified to include specific areas, “certain intersections, entry points into Town, certain roadways, and special sites in neighboring jurisdictions.”

## 1/13/09 Council decided to further consider the following from Section B:

### B. Zoning Ordinance

1. Establish a new policy for agricultural open space that would require environmental review of larger (> 5 acres) agricultural operations to ensure that agricultural open space doesn't lead to environmental degradation.

COUNCIL ACTION B1:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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1/13/09 minutes

- Council consensus was to return for further review.
- Jean Wilson comments: disagrees with this, a new policy for agricultural open space that would require environmental review of larger (5 acres) agricultural operations to ensure that agricultural open space doesn't lead to environmental degradation; questioned if the Town is proposing annual review to monitor it, the Town should not get involved in reviewing residents agricultural practices; there is no evidence that there is a serious problem and this is unnecessary.
- Roger Smith comments: basis for this was because what happened in the Montserrat project where 45 acres were scraped in order to put vineyards in and nothing was done about it; he is concerned about his water because of the pesticides that are being used close to his well; there should not be a free ride to someone that is coming in and doing a massive agricultural operation.

3. Emphasize that clustering should only be approved where it will result in significant benefit to the community and/or significant preservation of open space and natural resources.

COUNCIL ACTION B3:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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1/13/09 minutes

- Council consensus was to return for further review.
- Roger Smith comments: clustering should only be approved where it will be a significant benefit to the community.

## **4/20/09 Council decided to further consider the following from Section C:**

### **C. Development Practices**

1. Communicate to developers an expectation for “set asides” for park areas and open space. On larger developments, this expectation should be at least 30% of the land area.

COUNCIL ACTION C1:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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4/20/09 minutes

- Council agreed to send this back to the Town Attorney to research legal issues.
- Jean Wilson comments: 30% of land is a huge amount to ask for, can that be justified, there is no definition of “larger” development and suggested Council get staff input on State Law in regards to set asides before making a decision.

2/2/10 The Town Attorney advised as follows;

The primary question is whether the Town has to pay the developer for the land. In other words, is it a “compensable taking?”

As case law evolves, the law is tending to compartmentalize most takings issues into two main categories: (1) physical takings; and (2) regulatory takings. In addition, there are still takings issues that do not fit into either category (e.g. intrusion of one’s vested rights or non-conforming status). Finally, there is the following language which was written before any modern takings cases in the land use arena were decided, which continues to assist courts in their analysis:

“[T]his court [the United States Supreme Court] quite simply, has been unable to develop any ‘set formula’ for determining when ‘justice and fairness’ require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few people.” Penn Central Transportation v. City of New York (1978) 438 U.S. 104, 124.

Once a court determines which category the 30% set aside falls into (which will depend on such things as whether the property is be used only by subdivision lot owners or by the public at large, who will ultimately own the property, whether an easement or the entire fee simple is being conveyed, whether the number of dwellings that can be built remains the same, etc.) then it will apply the applicable rules , and subsets of rules, accordingly.

If the court were to determine that the set-aside requirements fell into the physical taking category, the Town would automatically be required to reimburse the developer the amount of the set-aside valued at its 'highest and best use.' If was determined that the requirement was a regulatory taking, the court would choose from among several possible sub-sets of rules.

Assuming the requirement was to give the Town the 30% set-aside in easement or fee to be used for parks or open space for the general public, the court would likely ask whether there is a sufficient 'nexus' between the impacts cause by the proposed development and the requirement that 30% of the property be given away. (There is also a subordinate 'rough proportionality' requirement that would be applied.)

Given our historical propensity for holding private property in such high esteem, it is likely that a 30% set-aside requirement would not withstand judicial muster.

In order to determine what would be realistic, and to improve the chances of justifying that requirement, some towns and cities have conducted a nexus study. The Town Attorney can elaborate on these responses at the meeting.

3. Clarify and formalize the review / approval process for Final Maps, including the approval of Building Envelopes, Notebooks and CC&Rs prior to Final Map approval. Ensure that Final Map is not a substantial change from Approved Tentative Map.

COUNCIL ACTION C3:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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4/20/09 minutes

- Council agreed to refer this to the Town Attorney for clarification. Discussed was the wording "substantial change."
- Jean Wilson comments: this section isn't needed but suggested adding the words "where appropriate".
- Roger Smith comments: staff should have formal guidelines on where to include building envelopes; there needs to be a process/guidelines to insure that the final map will not be any different than the approved tentative map.

2/2/10 The Town Attorney advises as follows;

State Law requires that the town engineer or town surveyor determine whether the final map is in substantial conformity with the tentative map. "Substantial

conformity” is not defined anywhere, but the fact that the statute requires the engineer or surveyor to make the call, suggests that this is intended to be an engineering rather than a planning (or political) exercise. Council is not allowed to designate someone other than the town engineer or surveyor to make this determination. Nor can Council do so itself.

7. In the RR, RE & RA zoning areas, limit the clearing and grading of parcels to well defined Building Envelopes, documented via Notebooking on all parcels.

COUNCIL ACTION C6:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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4/20/09 minutes

- Council agreed to have this item return to Council for further discussion and clarification.
- Jean Wilson comments: regarding clearing, grading, notebooking, building, envelopes on all parcels we already have setback ordinances, tree ordinances, grading ordinances and various other controls to handle these issues without creating a new burdensome and unnecessary ordinance.
- Roger Smith comments: “they recommended that clearing and grading be limited just to the building envelopes and not allowed before it is sold.”

8. Require developments to be designed to respect and maintain wildlife corridors. Any fencing used should not unnecessarily restrict wildlife movement.

COUNCIL ACTION C8:	REFER TO PROSC	RETURN TO COUNCIL right to farm issues	TABLE
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4/20/09 minutes

- Council agreed to bring this item back for further clarification and to include “the right to farm.”
- Jean Wilson comments: regarding wildlife corridors we need to strike a balance on property rights and wildlife rights, request rejection of fence aspect and table corridors for further study. This would prevent us from using any type of plastic deer mesh, electric fencing, barbed wire, and any type of smaller cell fencing to keep small animals from our yards, gardens, orchards or crops and would be unfair to the landowner.
- Roger Smith comments: fencing should not necessarily be use to block, there should be guidelines.

## 8/24/09 Council decided to further consider the following from Section E:

### E. Other Policies

5. Re-create a Design Review Board, as existed prior to formation of the Town.

COUNCIL ACTION E5:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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8/24/09 minutes

- Council moved to return this item to Council.
- Jean Wilson comments: a design review board is not needed, it will only create another level of bureaucracy, forms, delays and expenses' we already have Planning Commission design review for industrial and commercial areas; we do not need or want to become a community of cookie cutter homes; asks Council not to reinstate it.
- Pat Miller comments: was in favor of re-creating a design review board.
- Vic Markey comments: [referring to Parks, Recreation and Open Space Committee] they are dealing with these issues already; they look at what the value is that Loomis is looking for (design review) when they do the green sheets (project review sheet).

## 8/24/09 Council decided to further consider the following in the section having to do with the section dealing with Review of Proposed Projects:

3. Town should clearly define the staff responsibility for review and approval of project CC&Rs and Development Notebooks (for individual lots).

COUNCIL ACTION RP3:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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8/24/09 minutes

- Council moved to have this item come back to the Council.
- Pat Miller comments: when she was on the OSC 2 they were frequently confused, they had a hard time finding out where a decision came from; confusion also came from different departments on where a direction comes from or approval and what backs up that approval; questioned why it is okay to take out a lot of trees in one area when she can't take out a lot of trees on her property.

**8/24/09 Council decided to further review the following in the section on Education and Outreach:**

2. Make public aware of specific projects even before the Planning Commission reviews them; organize educational programs & events to keep public informed.

COUNCIL ACTION EO2:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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8/24/09 minutes

- Council moved to return this item to Council
- No public comments



## 12/17/09 CITIZEN REQUEST

On 12/17/09 Irene Smith submitted the following email describing an idea to include in the Master Plan. The request was made to the Park, Recreation and Open Space Committee. The Committee did not consider the request because I figured that this type of request is something that Council should review just like the foregoing OSC-2 recommendations.

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From: **Irene Smith** <[n8rlvr2009@gmail.com](mailto:n8rlvr2009@gmail.com)>

Date: Thu, Dec 17, 2009 at 1:23 PM

Subject: Loomis Trails Plan

To: [srobertson@omnimeans.com](mailto:srobertson@omnimeans.com)

Hello,

My name is Irene Smith. I am very interested open space preservation as well as a system of trails for our Town. It has been suggested to me that I contact you.

I served for 3 years on the Open Space Committee and helped develop the Open Space 2 Report, which placed a high priority on preserving and protecting open lands in Loomis. One of the benefits of preservation is to provide access so that some of these lands can be enjoyed by residents.

I am currently working on a conceptual proposal to the Town of Loomis to preserve a 50 acre piece of land in the Sierra de Montserrat development, which has been taken back by the bank in a foreclosure action. This piece of land abuts Franklin School on Laird Road. My proposal is to purchase this piece of land through a partnership and create a nature trail/outdoor classroom facility that would use Franklin School as a staging area for parking, restrooms, and access to a trailhead behind the school. This is a gorgeous piece of land with ridetop views, amazing rock outcroppings, dense oak woodlands, beautiful wildflowers and even an historic canal system used during the days of gold mining in Loomis. It offers numerous opportunities for enjoyment and education.

My understanding is that you are taking suggestions for future trails in the Town of Loomis and I would like to see this idea included in your overall Master Plan.

I will be making a formal presentation at a future Parks, Recreation and Open Space meeting. I have attached a draft of the presentation for you to peruse. I would be happy to talk to you in more detail and can be reached at 916-652-5685.

Thank you,  
Irene Smith

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Council has not discussed changing land designations (zoning) or uses on Montserrat after approving subdivision conditions that required the following land uses:

	ACRES	
Development envelopes (62 lots)	99.21	
Conservation Easement - wetlands	91.66	
Conservation Easement - oak woodlands	67.94	
Agricultural Easement - vineyards	45.00	
Infrastructure (roads etc)	18.74	
TOTAL ACRES	322.55	
SUMMARY	ACRES	PERCENT
Developed land (housing & infrastructure)	117.95	37%
Undeveloped land (Conservation and Agricultural)	204.60	63%

The attached map shows land details within the subdivision.

On November 6, 2009 Council was informed of a change in the circumstances of the Montserrat Subdivision as follows:

TO: TOWN COUNCIL  
FROM: TOWN MANAGER  
RE: MONSERRAT INFORMATION

Today I was contacted by Irene Smith and later Joyia Emert concerning a foreclosure sale that occurred on Tuesday Nov 3 wherein a bank took over Montserrat. I contacted Curt Westwood and he made the following points:

- Bank (Comerica) exercised a right that gave them 80% of the project. That is 80% of the project not already sold. Westwood has 20%.
- Westwood is in charge of HOA and design review until 2012. At that time the Bank could vote him out if they wish.
- Work having to do with wetland and oak land restoration continues with Restoration Resources but the Bank will now pay its share.
- Vineyard is owned by HOA and Westwood will continue to manage it.
- Westwood plans to continue advancing his legal issues with the bank and expects to have full control of the project within the next year or two.

In a meeting with Lincoln Leaman of Warmington Homes, Mr. Leaman advised Staff that Warmington was retained by Comerica Bank to maintain the Bank

owned property. Mr. Leaman also indicated that Curt Westwood and investors continue to negotiate with the Bank to resume control of the subdivision.

A January 7, 2010 email from Irene Smith to the Town Manager noted the following:

Forwarded is a copy of the email letter from Jeff Darlington. Also, attached is a copy of my proposal in Word form. Hopefully, you can now read it and distribute to the Council.

Thanks,  
Irene

----- Forwarded message -----

From: **Jeff Darlington** <[jeffd@placerlandtrust.org](mailto:jeffd@placerlandtrust.org)>

Date: Wed, Dec 16, 2009 at 2:42 PM

Subject: RE: Montserrat

To: Irene Smith <[n8rlvr2009@gmail.com](mailto:n8rlvr2009@gmail.com)>

Hi Irene,

Thanks again for the tour.

I did speak with Pat Shea, and he informed me that anyone purchasing the lots would be subject to a \$15,000 fee plus \$6,600 annually to support management and monitoring of what's already been preserved on the property. He said Wildlife Heritage Foundation has easements covering about 50% of the property – obviously not including the homesite areas. If you want to follow up with him on their interest and role in this property, here is his number: (916) 434-2759.

PLT's interest at this point can be in the form of this quote from me:

"In keeping with our MOU with the Town of Loomis and our mission to work with willing landowners and conservation partners to permanently preserve natural and agricultural lands in Placer County, PLT supports the protection of large properties in the Loomis Basin like the Montserrat property, which support local wildlife and offer recreational and educational opportunities and multiple public benefits. PLT is willing to be a part of any discussion regarding the protection of this property, at the discretion of the landowner."

Hope that helps. I will be out the rest of the month on family leave, returning the first or second week of January.

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**From:** Irene Smith [mailto:[n8rlvr2009@gmail.com](mailto:n8rlvr2009@gmail.com)]

**Sent:** Monday, December 14, 2009 12:22 PM

**To:** [jeffd@placerlandtrust.org](mailto:jeffd@placerlandtrust.org)

**Subject:** Montserrat

Hi Jeff,

Thanks for meeting with us recently to walk the property in Montserrat and hear our proposal.

The Parks, Recreation and Open Space Committee (PROSC) of Loomis is going to agendaize this conceptual proposal at their next meeting for discussion. I will tell them of our meeting and conversation and the interest you expressed of a possible acquisition if there is a "willing seller". I would really like to have something to present them in the way of a letter from you reiterating your words of support. Is it possible to get this from you?

Also, did you meet with Pat Shea of Wildlife Heritage Foundation and were you able to discuss this? I'd really like some feedback from you, if possible.

I have been talking with the bank who owns the property and they have listed it with a real estate broker. They are definitely a "willing seller" and have set the price at \$7 million for 50 lots, including the spec home, however, they have some legal issues to work out. I will be talking with the broker soon as well as other potential partners. It would be very helpful to "get the ball rolling" by indicating that PLT may have some interest in helping to protect this beautiful land with its educational opportunities in South Placer County before the opportunity is lost. Time is of the essence.

Thank you, Jeff.

Irene and Roger Smith

Attached to the foregoing email correspondence was the following information:

“BOOM TIME FOR OPEN SPACE”

This is the title that appeared on a report produced by KQED regarding the opportunities to conserve open space in these challenging times.

It's struck me that, though these are times of great obstacles, there will probably never again be such a time of opportunity!

The Open Space Committee was formed to seek out opportunities within our borders and approach "willing owners" to see if they would be interested in either selling their land for conservation purposes, or put a conservation "easement" on it, which would protect the land in perpetuity, while providing the landowner favorable tax incentives.

Today, large developable properties are not immune to foreclosures and there is reason to be excited about the possibility to protect some of the last open, unimproved lands within our borders before they are developed! I'd like to share with you one prospective opportunity.

The development known as Sierra de Montserrat contains the largest piece of land ever purchased and prepared for development in Loomis - 320 acres.

“Montserrat” contains 62 lots, averaging 5 acres each with approximately 80 acres of protected wetlands. The development also has 45 acres of vineyards spread throughout sections of it’s land.

Montserrat was recently taken back by the lender in a foreclosure action. The lender now owns 50 lots of the original 62 and they have hired a real estate broker to sell their interest in these lots. Their preference is to sell all 50 lots as a whole, however, if not sold this way, they will consider selling smaller sections of land, given that certain legal obstacles be surmounted with California Department of Real Estate.

I am proposing the conservation of 11 lots, or approximately 50 acres, adjacent to Franklin Elementary School, which abuts Montserrat at the eastern (Laird Road) end of the development. The location of the school next to this awesomely beautiful, natural area provides endless educational opportunities such as hands-on nature and environmental studies as well as historical and cultural studies. The School affords access and, facilities such as parking, restrooms, and staging areas. In addition, an area this size provides rich opportunities for an interpretative trail system and could open up new, safe areas to walk a dog, ride a horse, exercise and enjoy the solitude and beauty of rural Loomis.

I have recently met with Executive Director Jeff Darlington of the Placer Land Trust regarding the property in question and he has expressed interest in a possible partnership to acquire the property if there is a “willing seller”. Most of Placer Land Trust’s purchases have thus far been in northern Placer County, however, he is aware that southern Placer County still offers some opportunities during this unique time of bargain basement pricing. We know that their IS, in fact, a “willing seller”.

Potential partners for this acquisition are Placer Land Trust, the Town of Loomis, Franklin School, Loomis Basin Horseman’s Association, PCWA (there are active and historic water canals running through the property), Placer Legacy and Wildlife Heritage Foundation.

There is a lot of work to do to form this partnership and raise the necessary funding to make a purchase this size. I am urging you to ask the Town Council to support this proposal in concept and make it a high priority on your list of opportunities for creating open space in Loomis.

We have been given a second chance to save some of the lands previously exploited by developers when the real estate market was hot. This time, like everything, will pass.

If there ever was an opportune time for PROSC and the Town Council to save open space and keep Loomis rural, it is NOW!

An email from Curt Westwood, owner of Montserrat, made the following points:

**From:** Curt Westwood [mailto:CWestwood@WestwoodCompany.com]  
**Sent:** Thursday, January 07, 2010 4:12 PM  
**To:** Perry Beck  
**Subject:** RE: ADDITIONAL MONTSERRAT COMMENTS FROM IRENE SMITH

You should know that any future owner of any parcel of property in Montserrat will have to abide by the recorded CC&Rs, even the Town of Loomis. The CC&Rs require all lot owners to pay HOA dues. All owners must also pay the Annual Maintenance Fee assessed by the Town of Loomis on each of the 62 lots. This assessment is billed twice a year with property taxes. Pat Shea has already stated that the lots are encumbered by a conservation easement that will not permit Mrs. Smiths proposed uses. Furthermore, to insure that the conservation area is not encroached upon in any way each lot purchaser must pay \$15,000 per lot to Wildlife Heritage Foundation per the recorded easement as well as the recorded Restrictions. The recorded documents also require each lot owner to complete the construction of a residence within 3 years of the acquisition of a lot otherwise our company has the right to re-purchase the lot for the price paid by the buyer. It would be a good idea to have the town's attorney review all the recorded documents that protect Sierra de Montserrat. I have included a few for your review.

An email from the Patrick Shea, Director of Wildlife Heritage Foundation that serves as conservation grantee on Montserrat made the following points:

**From:** Patrick Shea [mailto:pshea@wildlifeheritage.org]  
**Sent:** Wednesday, January 20, 2010 12:54 PM  
**To:** Perry Beck  
**Subject:** RE: ADDITIONAL MONTSERRAT COMMENTS FROM IRENE SMITH

Mr. Beck, I want to support Curt Westwood's note to you concerning Irene Smith's grand plan to purchase a certain number of lots and use the area for various activities. As Mr. Westwood pointed out, approximately 75% of each lot is covered by a conservation easement that prohibits most of the activities envisioned by Ms. Smith. It is the responsibility of the Wildlife Heritage Foundation (WHF), as grantee of the conservation easement, to protect the conservation values of the protected property in perpetuity. I cannot envision any scenario that would allow WHF to forfeit this responsibility.

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Council is asked to determine what, if anything, should be done with the foregoing information concerning Montserrat Subdivision.

COUNCIL ACTION 12/17/09 CITIZEN REQUEST	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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# SIERRA DE *Montserat*

